IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

. Appeal From Order No. 170 of 2006.
with CAA No.262 of 2006.

Goldie Sud and Anr.
..Appellants.

Versus.

Municipal Corpn.G.Mumbai
& Ors.
..Respondents.

A.A. Joshi i/b Nivit Srivastava for the Appellants.
Mrs. Geeta Joglekar for B.M.C.
Mr. R. M. Sawant L.R.4.

CORAM:A.M.KHANWILKAR,J.
DATED:18.03.2006

P.C.:-

. Heard the learned counsel for the parties.

. Admit.

. Mrs. Geeta Joglekar, Advocate appearing for respondent no.1 waives service and Mr. Sawant waives notice for respondent no.4.

. Respondent No. 1 and 4 are the contesting respondents. Notices to respondent No. 2 and 3 are dispensed with for the purpose of present appeal, by consent.

. This appeal takes exception to the order passed by the Trial Court refusing to grant ad-interim reliefs during the pendency of Notice of Motion. Order was passed on 1st of February,2006. The trial Court has observed that no case for grant of ad interim injunction was made out by the appellants from the documents produced on record. No other reason is recorded in the impugned order. This Court has time and again observed that grant or non-grant of ad-interim relief is not a mechanical or unintelligible order to be passed by the court. The court has to record reasons which led to passing of such an order. Merely saying that documents produced by the plaintiff, no case for grant of ad-interim injunction is made out, is not sufficient. The trial court ought to have referred to the documents so pressed into service by the appellants and then recorded its opinion as to why it was not inclined to grant ad-interim injunction.

. During the course of argument, the learned counsel for respondent no.4 fairly accepts that the appellant has rushed to the Trial Court by way of a suit. Immediately after the issuance of notice under Section 351 of the Mumbai Municipal

Corporation Act,[the "Act" for short]. At the same time, occupants of the structure have made representation to the authority which is still pending for consideration. In such a situation, question of proceeding with demolition action will not arise, which legal position has been expounded in the decision of this Court in case of Sopan Maruti Thopte Vs. Pune Municipal Corporation, 1996 [1] Mh.LJ, p.963. If it is so, question of refusing ad-interim order in such a situation does not arise.

. It is rightly contended by the learned counsel for the respondent no.4 that nothing will survive for consideration in the suit filed by the appellant,unless the same was to be amended seeking appropriate reliefs or fresh suit was tobe filed in that behalf after the decision of the appropriate authority on the pending representation before it.

. Accordingly, this appeal is allowed. The impugned order is set aside. Instead the respondent no.4 who is the appropriate authority for issuing suit notice, is directed to decide the representation made by the occupants and, in case, if any adverse order is passed may proceed to take

action of demolition as may be permissible by law after the period of two weeks from the date of service of order on the concerned persons. Till such time no precipitative steps should be taken in regard to suit structure.

. Appeal as well as Civil Application disposed of on the above terms.

. Counsel for the appellants fairly conceds that in view of the arrangement directed by this Court, in the above terms, nothing will survive in the suit which has been filed before the Trial Court. The appellants will take steps for withdrawal of the suit before the Trial Court. That assurance is accepted.

. As a matter of fact, if the Authority were to decide the representation filed in response to notice under Section 351 of the Act, by the occupants, nothing will survive in the suit as filed. Because it will have to be held that due process of law has been followed. The plaintiff or the occupants of the suit structure will have to

then take recourse to challenging the decision of the appropriate authority on its own merits or on such other grounds as would be permissible by law.

[A.M.KHANWILKAR.J]